IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 13TH DECEMBER 2006 / 22ND AGRAHAYANA 1928

Crl.MC.No. 1701 of 2006()

AGAINST THE ORDER IN CC.95/2002 (ST. 396 /2002) of CHIEF JUDICIAL MAGISTRATE COURT, PALAKKAD

.....

PETITIONER: ACCUSED:

---

1. M/S. STEEL INDUSTRIALS KERALA LTD.,
   FOUNDRY UNIT, P.O. PALAPPURAM, OTTAPALAM,
   PALAKKAD THROUGH SRI.T.C.KHALID, MANAGING DIRECTOR

2. SRI.T.C.KHALID,
   MANAGING DIRECTOR, STEEL INDUSTRIALS KERALA LTD.,
   ATHANI, THRISSUR-680 771.

3. MOOSAKUTTY,
   MANAGER, STEEL INDUSTRIALS KERALA LTD.,
   FOUNDRY UNIT, P.O. PALAPPURAM, OTTAPALAM,PALAKKAD.

BY ADV. SRI.E.R.VENKATESWARAN

RESPONDENTS: COMPLAINANT & STATE:

---

1. THE ENFORCEMENT OFFICER,
   EMPLOYEES PROVIDENT FUNDS, RAM ARCADE, 2ND FLOOR,
   CHANDRANAGAR, PALAKKAD-678 007.

2. STATE OF KERALA,
   REPRESENTED BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL,SC, P.F.
PUBLIC PROSECUTORSRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13/12/2006 ALONG WITH CRMC NO. 1640 OF 2006
CRMC NO. 1681 OF 2006 CRMC NO. 1682 OF 2006
CRMC NO. 1684 OF 2006 CRMC NO. 1691 OF 2006
CRMC NO. 1692 OF 2006 CRMC NO. 1693 OF 2006
CRMC NO. 1694 OF 2006 CRMC NO. 1695 OF 2006
CRMC NO. 1696 OF 2006 CRMC NO. 1697 OF 2006
CRMC NO. 1698 OF 2006 CRMC NO. 1713 OF 2006
CRMC NO. 1714 OF 2006 CRMC NO. 1715 OF 2006
CRMC NO. 1716 OF 2006 CRMC NO. 1717 OF 2006
CRMC NO. 1718 OF 2006 CRMC NO. 1720 OF 2006

..2/-

CRMC NO. 1721 OF 2006 CRMC NO. 1732 OF 2006
CRMC NO. 1733 OF 2006 CRMC NO. 1734 OF 2006
CRMC NO. 1737 OF 2006 CRMC NO. 1738 OF 2006
CRMC NO. 1739 OF 2006 CRMC NO. 1870 OF 2006
CRMC NO. 1871 OF 2006 CRMC NO. 1872 OF 2006
CRMC NO. 1873 OF 2006 CRMC NO. 1874 OF 2006
CRMC NO. 1875 OF 2006 CRMC NO. 1876 OF 2006
CRMC NO. 1877 OF 2006 CRMC NO. 1878 OF 2006
CRMC NO. 2105 OF 2006 CRMC NO. 2106 OF 2006
CRMC NO. 2107 OF 2006 CRMC NO. 2108 OF 2006
CRMC NO. 2109 OF 2006 CRMC NO. 2110 OF 2006
CRMC NO. 2111 OF 2006 CRMC NO. 2113 OF 2006
AND CRMC NO. 2114 OF 2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT.J

Crl.M.C.Nos. 1640, 1681, 1682, 1684, 1691, 1692, 1693, 1694, 1695,1696, 1697, 1698, 1701, 1713, 1714, 1715, 1716, 1717, 1718, 1720, 1721, 1732, 1733, 1734, 1737, 1738, 1739, 1870, 1871 1872, 1873, 1874, 1875, 1876, 1877, 1878, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2113, 2114 of 2006

Dated this the 13th day of December 2006

ORDER

The petitioners are a public limited company, its Managing Director and Manager respectively in all these petitions. The first respondent , the enforcement officer, Employees Provident Fund has initiated prosecutions against the petitioner in these various prosecutions. The first petitioner is a Public Sector Unit owned by the Government of Kerala. it is submitted. There has been default in payment of amounts due to the provident fund. Employees contribution, Employers contribution, damages etc are liable to be paid and have not been paid. It is on this premise that these prosecutions have been initiated against the petitioners. Cognizance has been taken by the subordinate criminal courts and prosecutions are pending before such courts.

2. Petitioners have come to this court with these petitions with the prayer that the powers under Section 482 of the Cr.P.C may be invoked to quash these prosecutions initiated against the petitioners. The learned counsel for the petitioners submits that the first accused is a Government Company and depends on the funds provided for it by the Government to discharge the liability to the respondent/ the provident fund. In as much as the first petitioner company is in grave financial difficulties and the Government is not making the requisite funds available for the company, the company is unable to discharge the liability. It will be harsh, insensitive and cruel if the petitioners were to be prosecuted and incarcerated in prison for the inability of the Government to make the requisite funds available to the first petitioner. The second and third petitioners are only the Managing Director and Manager appointed by the company and when funds are not available to the company, there is no way for the second and third petitioners to discharge the liability and avoid prosecution. In these circumstances it is prayed that the prosecutions may be quashed.

3. The application is opposed by the respondent. The learned counsel for the respondent/ complainant submits that the inability/ financial

difficulty of the company to raise the requisite amounts to pay and to discharge the liability cannot be reckoned as a valid reason. Such a defence is not recognised by law. If this Court were to quash the prosecutions on that ground, many private employers similarly placed will also be justified in making identical requests. It is in these circumstances prayed that the prayer to quash the proceedings may be rejected.

4. I have considered all the relevant inputs I do not want to express any opinion on the culpable liability of the accused persons in the prosecutions which are pending against them. The only reasons urged by the petitioners to justify the quashing of the proceedings is that the company is a Government company and it is facing grave financial difficulties. This, I am in total agreement with the learned counsel for the complainant, cannot certainly be reckoned as a sufficient reason for exculpation from criminal liability and to quash the proceedings against them. Government is expected to be a model employer and if the Government company does not discharge liability to the provident fund that certainly sends out a very negative message. At any rate I am not satisfied that such financial difficulty of the first petitioner can be reckoned as sufficient reason to invoke the powers under Section 482 of the Cr.P.C

to quash the proceedings. I find no merit in such prayer . Th extraordinary inherent jurisdiction available to this Court which has to be invoked sparingly and in exceptional cases does not at all deserve to be invoked.

5. In the result these Crl.M.Cs are dismissed . I may hasten to observe that the dismissal of this Crl.M.C. will not in any way fetter the rights of the petitioner to raise all appropriate and relevant contentions before the courts where the prosecutions are pending. Nor shall it fetter the powers to the respondent to withdraw the prosecutions if sufficient reasons are shown and the liabilities are substantially is discharged.

R.BASANT, JUDGE

es